

# NEPA HANDBOOK

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## 1. GENERAL

### 1.1 Introduction.

A. Purpose. This Handbook provides guidance in preparing documents required by the National Environmental Policy Act of 1969 (NEPA), and the Council on Environmental Quality (CEQ) regulations implementing NEPA, for Bureau of Indian Affairs (Bureau) actions. It also explains how the Bureau and Indian tribes can use the NEPA process to advise other federal agencies on the impacts the actions of those agencies might have on Indian people and their environment.

B. Scope. This Handbook is strictly advisory. It does not create, add to, or otherwise modify any legal requirement. The procedures described in this Handbook are intended to aid Bureau officials in the internal administration of the agency, and are subject to re-interpretation, revision, or suspension by the Bureau as circumstances may require. Users of this Handbook should resolve any conflict with its content in favor of the applicable legal authority.

### 1.2 Authorities.

A. National Environmental Policy Act of 1969 (NEPA). Section 102(2) of NEPA establishes procedures that are binding on all Federal agencies. The primary requirement is that an Environmental Impact Statement (EIS) be prepared for every major Federal action significantly affecting the quality of the human environment. The full text of NEPA is included in this Handbook in Appendix 1.

B. Council on Environmental Quality Regulations. NEPA established the CEQ in the Executive Office of the President. The CEQ promulgated the Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1508). Appendix 2 of this Handbook contains a copy of these regulations. As stated in Executive Order 11991, the purpose of the regulations is:

"..... to make the Environmental Impact Statement process more useful to decision-makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. [The Regulations] require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses."

NOTE: Part 1500 of the regulations discusses their purpose in further detail. References to the regulations in this Handbook normally give only the section number, omitting "40 CFR."

C. Department of the Interior Procedures. The CEQ regulations require Federal agencies to adopt procedures to implement the regulations in agency programs. The implementing procedures of the Department of the Interior (Department) are in 516 DM (Departmental

Manual) 1-7. These procedures are generally uniform for all bureaus within the Department. However, because of the differences among bureaus, some provisions apply only to specific bureaus. These bureau-specific provisions are codified as Chapter 8-15 of 516 DM, with the information specified in 516 DM 6.5A. The chapter for the Bureau of Indian Affairs is 516 DM 10. A copy of 516 DM 1-15 is provided in Appendix 3 of this Handbook.

D. Bureau of Indian Affairs Manual. 59 IAM 3, issued 10/25/1999, lists the statutory authorities, and specifies the roles and responsibilities of Bureau officials for compliance with NEPA.

1.3 Responsibilities. The responsibilities of Bureau officials for administering compliance with NEPA and with CEQ regulations may be found in 516 DM 1.3 and 6.3-5, in 516 DM 10.1 and in 59 IAM 3. All Bureau officials having the authority to make decisions on proposed Bureau actions also have the responsibility for compliance with NEPA and the CEQ regulations for those proposed actions. Such officials should assign sufficient staff and financial resources to meet this responsibility.

A. Central Office Division of Environmental Management (DEM). The Division Chief exercises primary staff responsibility for policy direction, coordination, and monitoring of NEPA activities and resulting documents within the Bureau. DECRM also provides assistance, advice and training to achieve the objectives of Bureau compliance with NEPA.

B. Regional Directors. Regional Directors are responsible for NEPA compliance at the regional office level. Regional Directors should make adequate funds and adequately trained staff available for this purpose.

C. Regional NEPA Coordinators.

(1) implement the procedures established in this Handbook, and may develop region-specific policies or procedures consistent with this Handbook (See §2.4 below) when additional requirements are necessary.

(2) coordinate and assist with NEPA activities at the regional level and with the Agencies, Field Offices and tribes.

(3) serve as liaison between their Regional Office and DEM.

(4) maintain a Region-wide list of completed NEPA documents (Categorical Exclusions, EA's and EIS's), updated as of the end of each March and September.

(5) monitor mitigation measures stipulated in EAs and EISs.

D. Agency Superintendents and Field Office Directors. Agency Superintendents and Field Office Directors are responsible for NEPA compliance for actions initiated at their Agency or Field Office. If the Agency or Field Office does not have its own environmental coordinator, the Superintendent assumes the duties outlined in 1.3E.

E. Agency and Field Office NEPA Coordinators

- (1) implement the procedures established in this Handbook.
- (2) coordinate NEPA activities at the Agency/Field Office level and with tribes.
- (3) serve as liaison between their Agency/Field Office and their Regional Office.
- (4) submit to the Regional Environmental Protection Specialist, as requested by DEM, a list of completed NEPA documents (Categorical Exclusions, EAs and EISs) processed by or through the Agency/Field Office during a given period.
- (5) inform the Regional NEPA coordinator of, and monitor mitigation measures stipulated in EAs and EISs.

1.4 Definitions. For the purpose of this Handbook all definitions of terms are the same as those in 40 CFR Part 1508 (Terminology and Index). An additional term used in this Handbook is "Bureau decision-maker" (decision maker). This means the Bureau official to whom authority has been delegated to make the decision on a proposed action for which NEPA is required.

1.5 Relationships With Other Agencies. The CEQ regulations encourage agencies to consult cooperatively with each other prior to the preparation of an EIS, rather than submitting adverse comments after a document has been completed (§1501.1). There are three basic roles that the Bureau may assume in the NEPA process.

A. Lead Agency. If the Bureau has jurisdiction over the proposed action, it may take primary responsibility for NEPA compliance as the lead agency. The lead agency is primarily responsible for the preparation of the EIS for a proposed action. In some circumstances, two or more agencies may serve as joint lead agencies. The Bureau office that initiates the EIS shall notify DEM of joint lead arrangements within the Department. DEM will provide the Departmental Office of Environmental Policy and Compliance (OEPC) with the required notice of such arrangements. (See §1501.5 and 1508.16 and 516 DM 2.4)

- (1) Integrated Analysis. Integrate analysis uses a single NEPA process to enable several agencies to satisfy multiple environmental requirements by conducting

concurrent rather than consecutive analysis. Whenever the need for integrate analysis occurs, such as when a proposed action requires compliance with other permitting and/or regulatory requirements, the Bureau should

(a) develop memoranda of understanding with relevant regulatory agencies, detailing the process by which their regulatory and/or permitting procedures will be integrated into the Bureau's NEPA process, including ways to streamline analysis and bench marks for when analyses will be completed.

(b) establish core NEPA evaluation and documentation teams that include contact individuals from relevant regulatory and permitting agencies to coordinate the regulatory requirements of all agencies involved in a particular NEPA activity.

(c) arrange the sequencing of permits with other agencies to avoid unnecessary delays in agency planning, preparation and implementation.

(d) notify applicants when other permitting and/or regulatory requirements exist and provide them with the points of contact in the appropriate agencies to identify any additional information needed.

B. Cooperating Agency. The Bureau or affected Indian tribes may support another agency by providing special expertise or resources in the preparation of an EA, or by serving as a cooperating agency for an EIS. The Bureau should consider serving as a cooperating agency whenever a proposed federal action might affect Indian lands, rights or other interests. The Bureau office that initiates for the EIS shall notify DEM of cooperating agency arrangements. DEM will provide OEPC with the required notice of such arrangements. (See §§ 1501.6 and 1508.5 and 516 DM 2.5). Any cooperating agency arrangement to which the Bureau is a party shall be confirmed by letter, or, if the arrangement is complex, with an agreement.

C. Commenting Agency. The Bureau may comment on environmental documents prepared by other agencies. If a proposed federal action for which an environmental document has been prepared may affect Indian lands, rights, or other interests, the Bureau has a duty to review and, if appropriate, comment on the draft document, whether or not the BIA is a cooperating agency. Tribes may also review and comment on the document. (See §§ 1503.1, 1503.2, 1503.3 and 516 DM 7 and Chapter 7 of this Handbook for further details.)

NOTE: It is best to begin comments during the scoping process (see Chapter 6.4(B) of this Handbook). This provides a placeholder and establishes the Bureau's concerns in the administrative record.

## 2. NEPA AND BUREAU DECISION-MAKING

2.1 Introduction. This chapter explains how the NEPA process relates to Bureau decision-making. The NEPA process analyzes and discloses the significant impacts a proposed action may have on the quality of the human environment. Completing the NEPA process for a proposed action does not automatically mean that the action may be implemented. The decision on whether or not to proceed with the action must also take into account requirements imposed by laws, regulations, policies, procedures and other considerations unrelated to NEPA. An overview of the NEPA process is presented in Illustration 1.

2.2 NEPA Requirement. The primary requirement of §102(2) of NEPA (Appendix 1) is that an Environmental Impact Statement (EIS) be prepared for major federal actions (see §1508.18) significantly affecting the quality of the human environment. An Environmental Assessment (EA) is a less detailed document that may be used to determine whether or not an EIS is required. If, based on an EA, it is determined that a proposed action will not significantly affect the quality of the human environment, the decision maker may fulfill the documentation required by the CEQ regulations by issuing a Finding of No Significant Impact (FONSI). In addition, certain kinds of actions, called Categorical Exclusions, may be taken without the preparation of either an EA or an EIS. Chapters 3 and 5 of this Handbook provide guidance on how to determine whether a Categorical Exclusion, an EA or an EIS is appropriate for the proposed action.

2.3 Authority for Bureau Decision-making. Decisions that Bureau officials make are based upon delegations of authority which are documented in 3 IAM. Authority is generally delegated to the lowest level, typically the Agency Superintendent or the Field Office Director, where resources and competence are available for the proper exercise of that authority. Environmental documents are subject to review by higher level line officials.

2.4 Regional Addenda. Regional Directors may issue addenda to this Handbook to provide more detailed guidance regarding NEPA compliance for Bureau actions within their service areas. To assure consistency from Region to Region, such addenda must be submitted for approval through the Director of the Bureau of Indian Affairs to the Director of Management Support Services.

2.5 Tribal Governments and NEPA. Tribal governments have substantial authority, through their retained tribal sovereignty, for additional environmental protection within their reservations. This tribal governmental authority is distinct from the responsibilities and authority of the Bureau under NEPA and other Federal environmental laws, and from the federal trust responsibility. Activities affecting the environment of an Indian reservation often require the approval of both the Bureau and the tribal government. Because of this dual authority, the Bureau's NEPA process should be coordinated with the tribal decision-making process. Such coordination helps reduce paperwork and delay, integrates environmental considerations into the early stages of planning and increases the usefulness of the NEPA process for decision-makers.

A. Being Realistic about Timing. Tribes must be made aware in the earliest stages of their project planning of the NEPA and other legal and procedural requirements that would have to be met, and of how long it may take to complete those requirements, before their project may be implemented. This is especially important when tribes are negotiating with third parties.

B. Involvement in Preparation of Environmental Documents. Tribal governments that are applicants and/or are affected by a proposed federal action shall be consulted during the preparation of environmental documents. Tribes that qualify as eligible governmental entities under 516 DM 2.5 C must be invited to cooperate, at the tribe's option, in the review or preparation of Bureau environmental documents. Any requests by other tribes to participate as a cooperating agency with respect to the Bureau's preparation of a particular EIS must also be considered, and either accepted or denied. Notwithstanding the above, the Bureau retains sole responsibility and discretion in all NEPA compliance matters.

C. Tribal Environmental Laws. If a tribal government has enacted any environmental law or ordinance that applies to a proposed action for which the Bureau must prepare an EA or an EIS, compliance with the law(s)/ordinance(s) must be addressed in the EA or EIS. If the proposed action is categorically excluded, but taking the action might violate a tribal environmental law or ordinance, an EA must be prepared (516 DM 2, Appendix 2.9).

2.6 Indian Landowners and NEPA. Proposed actions by allottees or assignees on their trust allotments are subject to NEPA if a federal action is required before it may proceed.

2.7 Public Involvement. Public disclosure is a key requirement of NEPA. Departmental policy offers the public meaningful opportunities for participation in decision-making that may lead to actions and policies which may significantly affect or interest the public (301 DM 2.1). (See §1500.1(b), §1506.6, 516 DM 1.6, and 301 DM 2.) The public must be involved as early and often as possible in the NEPA process, and prior to development of draft alternatives and other early project documents.

A. Community-Based Training. As a part of the NEPA process, Bureau personnel must make a reasonable effort to train persons and organizations whenever it would enable these persons and organizations to more fully participate in the process. Such training should also strive to impart an understanding of the principles of adaptive management (see 4.4.G.(2)).

B. Consensus-Based Management in Agency Planning and Operations. The Bureau must make a reasonable effort to achieve agreement from diverse interests on the goals, purposes and needs of Bureau actions and the methods needed to reach those ends. This should include

- (1) establishing a network of communication with the diverse interest groups that represent the community affected by the proposed action.

NOTE: Consider the use of community based training in developing the network of communication. Besides helping participants better understand the NEPA process and their roles therein, it could provide a focal point for assembling the diverse interest groups that make up the relevant community.

(2) initiating the scoping process with full and direct involvement by the community, identifying and evaluating issues and impacts of concern relating to the proposed action. This applies to any NEPA compliance document.

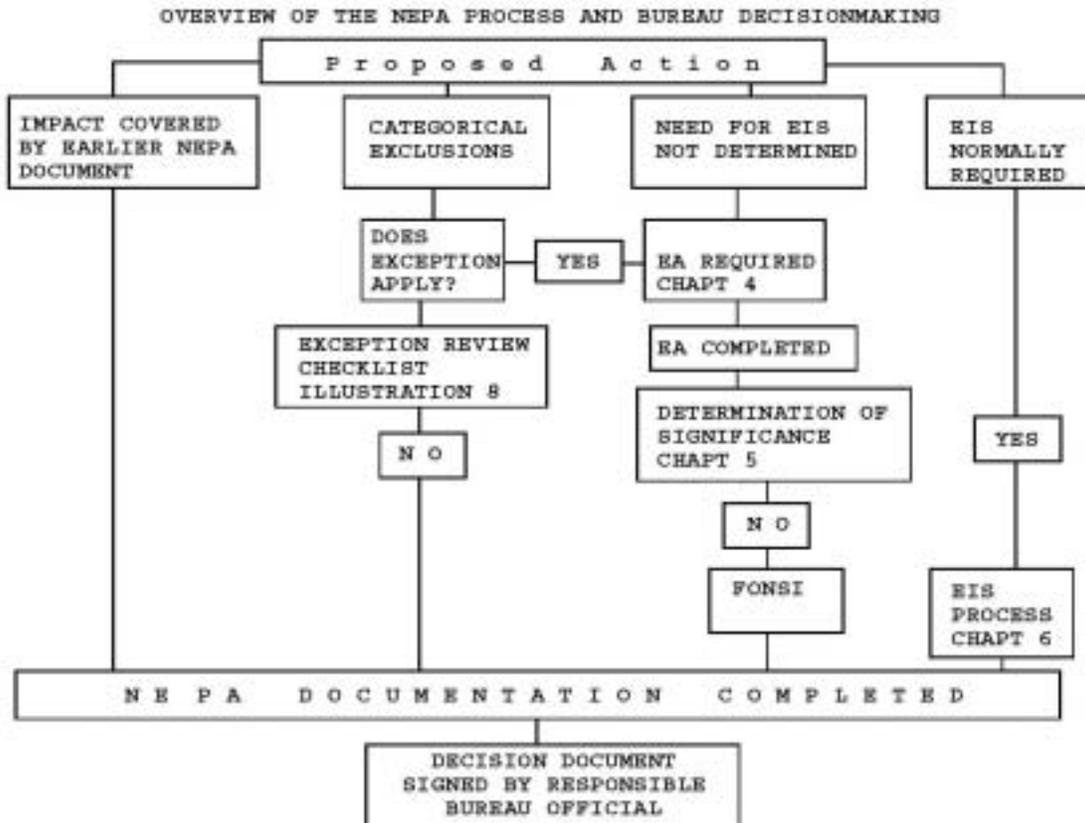
(3) when feasible and practical, including the community alternative, if one exists, among the alternatives evaluated in the NEPA analysis.

(4) when feasible and practical, and subject to statutory, regulatory and political constraints, designating the community alternative as the Bureau's preferred alternative in the NEPA process, so long as a consensus exists within the community in support of that alternative. Such consensus may be considered to exist when no locally established or commonly recognized group within the community has objections to the alternative that would undermine or nullify the proposed action; and/or when, in the judgement of the Bureau decision maker, the community alternative clearly enjoys the broad support of a fair and representative cross-section of the community.

C. Compliance with the Federal Advisory Committee Act (FACA). The FACA applies whenever a Bureau decision maker establishes or uses a committee, board, commission or similar group for the purpose of obtaining advice or recommendations on issues or policies within the decision maker's official responsibility. As a general rule, FACA does not apply to collaborative groups that are initiated outside the federal government and who maintain their independence from federal management or control, or to collaborative groups composed entirely of federal government representatives. In any case where there is doubt as to whether or not the FACA applies, the Bureau decision maker should consult with the Office of the Solicitor; and in cases where FACA does apply, consult with the Department's Group Federal Officer under FACA for assistance in document preparation.

D. Environmental Justice. Executive Order 12898 (February 11, 1994), "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," requires federal agencies to identify and address any disproportionately high and adverse human health or environmental effects their proposed actions might have on minority communities or low-income communities. The Bureau must therefore reach and communicate to the extent practicable with such communities, from the earliest stages of planning through the decision to proceed with a proposed action, and to specifically address in the environmental analysis any such communities that might be affected by a proposed action. The points where these approaches are incorporated in the Bureau's NEPA process are indicated throughout this Handbook. Detailed guidance is provided in Appendix 6.

Illustration 1



### 3. INITIATING THE NEPA PROCESS

3.1 Introduction. The purpose of this chapter is to provide guidance to Bureau personnel on the level of documentation required before a decision may be made on whether or not to implement a proposed action.

NOTE: Section 106, National Historic Preservation Act and Section 7, Endangered Species Act consultation should be started at the beginning of the NEPA process.

3.2 Actions not Requiring an EA or an EIS. Most federal actions do not result in significant environmental impacts. The CEQ regulations allow agencies to proceed with the following kinds of actions without preparing either an EIS or an EA.

A. Categorical Exclusions. Actions listed in 516 DM 2, Appendix 1 and 516 DM 10.5 have been determined not to individually or cumulatively affect the quality of the human environment. However, circumstances may exist in which a normally excluded action could result in significant effects upon the environment. These circumstances are listed in the Exception Checklist for BIA Categorical Exclusions (Appendix 7). Proper use of the Exclusion Checklist is as follows:

(1) Check 516 DM 2, Appendix 1 and 516 DM 10.5. Is the proposed action listed? If yes, go to (2). If no, determine whether to prepare an EA or an EIS.

NOTE: The Exception Checklist may not be used on its own to determine that a proposed action is a categorical exclusion. An answer of no to all of the circumstances listed on the checklist does not create a categorical exclusion. The proposed action must be listed in 516 DM 2, Appendix 1 or 516 DM 10.5.

(2) Enter on the Exception Checklist, under Chapter 10 Exclusion Category, the paragraph number of the exclusion (e.g. 10.5.F.3). Write in title and date of document(s), when an earlier NEPA analysis is a provision of the exclusion (such as in 10.5. F.1).

(3) Determine (yes or no) if any of the circumstances listed exist in the case of the proposed action. If the answer is yes for any listed circumstance, determine whether to prepare an EA or an EIS. The categorical exclusion cannot be used.

(4) If the answer is no for all listed circumstances, obtain all signatures indicated on the Exception Checklist. Retain the signed checklist, and any other associated documentation (e.g. Section 106, Section 7), for the record. This completes the NEPA requirement for the proposed action.

B. Actions Analyzed in Existing Environmental Documents. If the environmental impacts of a proposed action are sufficiently covered in an existing federal EA or EIS, it may not

be necessary to prepare new NEPA documents. The use of such earlier documents is referred to as Adoption. (See 6.7 for guidance on using earlier documents.)

(1) An existing federal EA may be adopted if it sufficiently describes the Bureau's part of the proposed action and alternatives and fully assesses the impacts of the Bureau's action. The Bureau must either join the other agency in signing a collaborative Finding of No Significant Impact (FONSI), or prepare a FONSI that specifically addresses the Bureau's portion of the action and states that the Bureau is adopting another agency's EA.

NOTE: If the Bureau prepares its own FONSI, it is easier to prove that it independently evaluated impacts.

(2) An existing EIS, or portion thereof, may be adopted, as follows: (§1506.3)

(a) If the Bureau's proposed action is substantially the same as that in the EIS, the Bureau may treat and re-circulate the document as a final EIS.

(b) If there are minor variations in the Bureau's action, the EIS must be treated and re-circulated as a draft EIS; EXCEPT

(c) As a cooperating agency, the Bureau may adopt without re-circulating the EIS of the lead agency if, after an independent review of the EIS, the Bureau's comments and suggestions have been satisfied.

C. Emergencies. In an emergency, an action with significant environmental impacts may be taken without observing the provisions of the CEQ Regulations (See §1506.11 and 516 DM 5.8), if the action is necessary to control the immediate impacts of the emergency. Such actions, however, must be documented. All other actions remain subject to the NEPA process. In an emergency situation, contact DEM as soon as possible. DEM will consult and coordinate with the Assistant Secretary - Indian Affairs, OEPC and the Office of the Solicitor on alternative compliance actions. OEPC and the Bureau will jointly be responsible for consulting with CEQ.

3.3 Determination of Whether to Prepare an EA or an EIS. If none of the situations described in 3.2 apply, then an EA or EIS is required. This section provides guidance for determining whether to prepare an EA or an EIS.

A. EIS Required. The primary requirement of NEPA is that an EIS be prepared for every federal action that would or may significantly affect the quality of the human environment. There are three ways to determine if an EIS is required.

(1) List of actions in 516 DM 10.4 normally requiring an EIS.

(2) An EA finding that the proposed action would significantly affect the quality of the human environment and cannot be mitigated.

(3) Available information indicates that the proposed action would significantly affect the quality of the human environment and cannot be mitigated. Under these circumstances, there is no need to first complete an EA.

B. EA Required. An EA must be prepared for all Bureau actions, except those covered under 3.2 and 3.3. A. Also, if an EIS has been initiated and it becomes apparent that the action will not have significant impacts, the document may be released as an EA in support of a FONSI. The notice of cancellation for the EIS shall explain the reasons for not completing the document as an EIS and include a statement that the EA and FONSI will be made available for public review.

## 4. ENVIRONMENTAL ASSESSMENT

4.1 Introduction. An EA is a concise public document, for which a federal agency is responsible, that provides sufficient analysis for determining whether a proposed action may or will have a significant impact on the quality of the human environment. The EA should be completed early in the decision making process so that if it becomes apparent that the proposed action may or will have significant impacts, an EIS can be prepared. If the EA does not reveal any significant impacts, a FONSI is prepared. Illustration 1 shows where the EA fits into the NEPA process.

4.2 Initiating an EA. There are two ways that an EA may be initiated.

A. Internally Initiated Proposals. (See 516 DM 1.4B.) Internally initiated proposals are actions that the Bureau itself takes, such as the construction of a school. An EA is normally prepared by the program staff which has identified the need for the proposed action and which has lead responsibility for implementing the action. Depending upon the complexity of the proposed action, the responsibility for preparation of, or oversight of a contract for the preparation of the EA may be assigned to either an individual or an interdisciplinary team.

B. Externally Initiated Proposals. (See 516 DM 1.4 C.) Externally initiated proposals trigger Bureau actions, such as approval of the lease of trust land in response to a tribal proposal for economic development. The applicant (tribe or third party) normally prepares the EA. The EA should be submitted with the application, or as soon thereafter as possible. The Bureau shall, however, make its own evaluation of the environmental issues and take responsibility for the scope and content of the EA. (See §1506.5(b))

4.3 EA Contents and Format. Bureau EA's shall include brief discussions of the purpose and need for the proposed action, alternatives, including no action, the affected environment, and the environmental consequences, plus a listing of agencies and persons consulted. An EA may include enforceable and reasonable mitigation measures that will eliminate significant impacts.

NOTE: It is important to keep in mind that an EA is not supposed to be a short EIS. The analysis in an EA need not go beyond that needed to determine whether impacts will or may be significant. This analysis should rely on existing data.

A. Incorporation by Reference. All or portions of any pertinent, publicly available document, including, but not limited to existing EAs, EISs or state environmental documents, may be incorporated by reference into an EA. The text of the EA need only include a brief synopsis of such incorporated information. However, a FONSI must rely only on the information contained in the EA itself.

B. Combining Documents. An EA may be combined with another planning or decision making document. The analysis of the environmental impacts of the proposed action and

alternatives, however, must be clearly and separately identified in the combined document, and not spread throughout or interwoven into other sections. (516 DM 3.5.B).

4.4 EA Organization. An EA is typically organized as follows:

A. Cover Sheet. This will include the title and location of the proposed action; date of issue of the EA; name of responsible federal agency(s); and name(s) of the preparing entity(s). If the EA is to be circulated as a draft, this should be clearly marked on the cover sheet.

B. Table of Contents. This lists chapter and section headings, along with tables, figures and illustrations.

C. Purpose of and Need for Action. In this section, explain in a few sentences why the proposed Bureau action is being considered. The purpose of and need for the action should, at a minimum, clearly answer the questions: What federal action triggered NEPA? Why here? and Why now? in order to ensure that NEPA compliance is actually required and that the proposed action and alternatives address the purpose and need directly. If a programmatic EA or other program documents have previously been prepared relating to the proposed action, they should be referenced, but not repeated.

D. Alternatives. Consideration of alternatives should not be a mere exercise, but a good faith effort to find an adequate range of ways to fully and realistically meet the identified need or purpose of the proposed action. The proposed action and no action alternatives are mandatory and must be analyzed throughout an EA. The discussion of the proposed action should clearly answer the questions: Who? What? Where? and When?

(1) Other alternatives must also be considered. For most Bureau EAs, these can be described and eliminated in this section, with reasons given for not considering them further instead of analyzing them throughout the EA. This is because an EA is normally an internal document used by a decision maker to determine if a proposed action will have a significant impact on the environment. If the impact of the proposed action is significant, it would lead to an EIS where all viable alternatives are fully evaluated.

E. Description of the Affected Environment. In this section, succinctly describe existing conditions in the area in which the proposed action would occur. Do not discuss environmental effects in this section. Analyze effects in the Environmental Consequences section. Use page-sized maps, photos and other illustrations as much as possible. Existing documents may also be incorporated by reference, along with a summary of the key facts included in these references.

NOTE: The components of the environment to consider in preparing the EA are listed below. While all of these components should be considered, only those which will be affected by the proposed action need be described. For each of the remaining components, a brief statement of why the component will not be affected is sufficient.

- (1) Land Resources
  - (a) Topography (land forms, drainage, gradients)
  - (b) Soils (types, characteristics)
  - (c) Geologic Setting, Mineral and Paleontological Resources
- (2) Water Resources (surface and ground; quality, quantity, use, rights)
- (3) Air (quality/achievement, visibility)
- (4) Living Resources
  - (a) Wildlife (terrestrial, aquatic, threatened/endangered)

NOTE: Section 7, Endangered Species Act consultation should be completed at this point.

- (b) Vegetation (terrestrial, aquatic, riparian, threatened/ endangered)
  - (c) Ecosystems and Biological Communities
  - (d) Agriculture (livestock, crops, prime and unique farmland)
- (5) Cultural Resources
  - (a) Historic, Cultural, and Religious Properties
  - (b) Archeological Resources

NOTE: For the purposes of Section 106, National Historic Preservation Act compliance, the Area of Potential Effect should be determined and all potentially affected cultural resources identified at this point. This includes initial inquiry to the SHPO/THPO, surveys needed to locate resources and consultation with tribes.

- (6) Socioeconomic Conditions
  - (a) Employment and Income
  - (b) Demographic Trends

NOTE: For the purposes of environmental justice, be certain to include all minority and low income populations that are present.

- (c) Lifestyle and Cultural Values
- (d) Community Infrastructure (public services, utilities)
- (7) Resource Use Patterns
  - (a) Hunting, Fishing, Gathering
  - (b) Timber Harvesting
  - (c) Agriculture
  - (d) Mining
  - (e) Recreation
  - (f) Transportation Networks
  - (g) Land Use Plans
- (8) Other Values
  - (a) Wilderness
  - (b) Noise and Light
  - (c) Visual
  - (d) Public Health and Safety

NOTE: Phase I and II Contaminant Survey results may be included here.

F. Environmental Consequences. Good analyses in this section is the key to a good EA. Since the purpose of preparing an EA is to determine whether or not the proposed action will or may significantly affect the human environment, analyze all potentially significant effects, beneficial and adverse. Analyze in this section the impacts on the components described in 4.4.E. Discuss the consequences of each alternative on a component of the environment before moving on to the next component. The types of effects to be analyzed follow. For each type of effect, consider those that are short term, long term, irreversible and irretrievable.

(1) Direct Effects. Direct effects occur at the same time and place as the triggering action. For example, application of a pesticide kills a listed endangered plant.

(2) Indirect Effects. Indirect effects are later or away from the triggering action. For example, listed endangered birds die from eating seeds contaminated by the application of a pesticide.

(3) Cumulative Effects. Cumulative effects equals past actions, plus proposed action, plus present actions by others, plus reasonably foreseeable future actions by anyone. Identify reasonably foreseeable future actions through documents, such as tribal resolutions, zoning ordinances, Integrated Resource Management Plans or Natural Resource Restoration Plans; and through consultation with tribal and local planning offices. Put boundaries on the cumulative effects analysis for both time and location (e.g. over the next 5-10 years within the X watershed.)

NOTE: In order to minimize the need for NEPA documentation on specific actions, a reasonable grouping of related actions should be considered in the same EA. This would be particularly appropriate if there are impacts from individual actions which do not appear to be significant, but which may be significant when cumulative effects are considered. See the EPA cumulative effects guidance in Appendix 8.

(4) Disproportionate Effects (Environmental Justice). These are disproportionately high and adverse environmental effects, including human health, economic and social effects, on minority communities and low income communities.

NOTE: Any consultation to determine effects under Section 7 of the Endangered Species Act or Section 106 of the National Historic Preservation Act should be completed by the time the environmental consequences analysis is completed.

G. Mitigation Measures. When adverse effects are noted, mitigation measures to reduce or eliminate such effects may be identified where possible. Mitigation measures, however, may only be relied upon to support a FONSI if they are imposed by statute or regulation, or are an integral part of the action as originally proposed. Other mitigation measures may support a FONSI if they are enforceable. Discussion of mitigation measures must explain how each measure will be enforced. (See question number 40 of Appendix 4, CEQ Forty Most Asked Questions for more detailed discussion.)

NOTE: Extensive mitigation measures in an EA indicate that the proposed action warrants an EIS.

Consultation on and development of Memorandums of Agreement under Section 106 of the National Historic Preservation Act should be completed at this point if cultural resources would be adversely affected.

(1) Mitigation of Disproportionate Effects (Environmental Justice) Mitigation measures shall address, whenever necessary, high and adverse environmental effects to minority communities and low income communities.

(2) Adaptive Management. Adaptive management is a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes and, if not, facilitating management changes that will best ensure that outcomes are met or to re-evaluate the outcomes. Monitoring designed for adaptive management must be able to result in appropriate adjustments in project activities as the project is underway and planned mitigation is implemented. This monitoring must be built into the project and considered in the NEPA analysis and documentation. When applying adaptive management, the Bureau must involve the public by

(a) maintaining open channels of information to the public, including transparency of the monitoring process that precedes adaptive management and the decision making process by which it is implemented. This involves identifying indicators of change; assessing monitoring activities for accuracy and usefulness; and making changes in tactics, activities and/or strategies.

(b) providing post-activity opportunity for public and affected outside agency review of adaptive management practices, including practices that were exceptions to any resource management plans or that had permitting and/or other regulatory requirements not satisfied by prior coordination.

H. Consultation and Coordination. In this section, include agencies, organizations and individuals consulted, and coordination with applicable statutes, regulations and Executive Orders. Affected tribes and appropriate tribal agencies should always be included in this consultation.

(1) Consultation. Federal, tribal, state, and local agencies, such as those having jurisdiction by law or special expertise, and the interested public should be consulted in preparing the EA. This effort must involve all minority communities /low income communities that might be affected by the proposed action. All affected tribes (see 2.5 B.), the State or Tribal Historic Preservation Officer(s) and the U.S. Fish and Wildlife Service shall always be included in this consultation. List in this section the agencies, organizations and individuals consulted. Include all correspondence in appendices.

NOTE: The EA should contain documentation showing completion of the consultation processes under Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

(2) Coordination. Coordinate compliance with statutes and executive orders that apply to the proposed action with the preparation of the EA. A partial list of such statutes and executive orders follows. Because of the time that may be required for compliance, this coordination should begin early in the EA process. If compliance cannot be achieved by the time the EA is completed, explain in the EA how compliance will ultimately be accomplished. Be aware, however, that non-compliance at the time of the EA may lead to a finding of significant impacts.

- \*(a) National Historic Preservation Act
- \*(b) Endangered Species Act
- (c) Clean Water Act
- (d) Safe Drinking Water Act
- (e) Clean Air Act
- (f) Fish and Wildlife Coordination Act
- (g) Comprehensive Environmental Response, Compensation and Liability Act
- (h) Resource Conservation and Recovery Act
- (i) Federal Insecticide, Fungicide and Rodenticide Act
- (j) Toxic Substances Control Act
- (k) Asbestos Hazard Emergency Response Act
- (l) E.O. 13101 Greening the Government
- (m) E.O. 13007 Sacred Sites
- (n) Indian Gaming Regulatory Act (§ 20)

\*Always required (Except, National Historic Preservation Act compliance is not required for the issuance of a permit under the Archaeological Resources Protection Act of 1979).

NOTE: Remember, compliance with these laws is independent of NEPA and vice-versa.

I. List of Preparers. List all persons, with position title and area of expertise/ discipline, who contributed to the development of the EA.

J. Appendices. Include correspondence and reports resulting from consultation and coordination, a list of references cited, and any other pertinent material.

4.5 EA Processing. When the EA is completed, present it to the Bureau decision maker, along with recommendations for a finding. The decision maker may then:

A. Sign a FONSI. A FONSI is appropriate if the decision maker determines that the proposed action will not have a significant impact on the quality of the human environment. (See chapter 5 for directions on how to prepare a FONSI).

B. Direct Further Work on the EA. The decision maker may decide that the EA is not sufficient to determine whether or not an EIS is required. In such a case, he or she may direct the preparer(s) to revise analyses, consider new alternatives or mitigation measures, seek public involvement, or take other measures to make the EA adequate for making a decision.

C. Initiate an EIS. An EIS shall be prepared if the decision maker determines that the proposed action may or will have a significant impact on the quality of the human environment. (See chapter 6).

REMINDER: An EIS may be initiated at any time during the EA process, without completing the EA, if it becomes apparent that the proposed action will have a significant impact on the quality of the human environment.

4.6 Public Review. The EA shall only be made publically available for review and written comment at the time the Notice of Availability of the FONSI (5.3.B.(3)) is published; EXCEPT where the EA contains measures to mitigate impacts to the environment to a level below that which may be considered significant, or where there is public controversy over alternatives or environmental consequences, the EA shall be made available for public review and written comment for a period of no less than 30 days before publishing the Notice of Availability of the FONSI. See 2.7.D. and 5.3.E. for guidance on the publishing/posting of notices.

## 5. DETERMINATION OF SIGNIFICANCE

5.1 Introduction. The purpose of this chapter is to provide guidance for determining, based on an EA, whether or not a proposed action will have a significant impact on the quality of the human environment. This chapter also includes directions on how to prepare a FONSI.

5.2 Determination of Significance. Determine significance in terms of both context and intensity (See §1508.27), and in terms of all of the types of effects (direct, indirect, cumulative and disproportionate) defined in 4.4.F.

A. Context. Take into account the location, population and interests affected and the duration of impacts.

B. Intensity. Take into account the severity of impact. Consider the following:

(1) The degree to which the proposed action will adversely affect one or more components of the environment, even though its overall effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) The degree to which the action may adversely affect properties that are listed in, or eligible for listing in, the National Register of Historic Places, other cultural resources, scientific resources, park lands, prime farmlands, wetlands, wild and scenic rivers, ecologically critical areas or other special characteristics of the geographical area.

(4) The degree to which the effects are likely to be controversial.

NOTE: “Controversy” here means disagreement among experts over whether or not, or in what way a component of the environment, such as ground water, will be affected by the proposed action. It does not mean public controversy over the proposed action.

(5) The degree to which the effects are uncertain.

(6) The degree to which the action may establish a precedent.

(7) The degree to which the action is related to other actions whose cumulative effects would be adverse, even though the effect of the proposed action alone would not be adverse.

NOTE: Significance cannot be avoided by calling an action temporary or by breaking it down into small component parts (i.e. segmenting).

(8) The degree to which the action may adversely affect an endangered or threatened species or its habitat, as determined per the Endangered Species Act of 1973.

(9) The degree to which the action will have disproportionately high and adverse environmental or human health effects on minority communities and low income communities.

(10) Whether the action threatens a violation of federal, state or local law or requirements imposed for the protection of the environment.

NOTE: Significant economic or social effects by themselves do not require the preparation of an EIS (see §1508.14). They are, however, effects for purposes of NEPA and must be considered in determining whether a proposed action will have a significant effect on the quality of the human environment.

5.3 Finding of No Significant Impact (FONSI). (§1508.13). If it is determined that implementation of a proposed action will not constitute a major federal action significantly affecting the quality of the human environment, prepare a FONSI for the signature of the Bureau decision maker.

NOTE: The FONSI shall be based only on information included in the EA. If new information is developed between the EA and FONSI stages, amend the EA.

A. Contents.

(1) The statement: “Based on the [title and date of EA], it has been determined that the proposed action will not have a significant impact on the quality of the human environment, therefore, an Environmental Impact Statement is not required.”

(2) A brief statement of the reasons, with references to pertinent portions of the EA, supporting the finding.

(3) References to all other environmental documents related to the EA.

(4) Signature line for decision maker.

B. Decision Package. The decision package to be presented by Bureau environmental staff to the Bureau decision maker shall include:

(1) The FONSI.

(2) The EA.

(3) Notice of Availability. The CEQ regulations require that there shall be a public notice of availability of the FONSI (§1506.6(b)). This notice shall not be issued before consultation under Section 106 of the National Historic Preservation Act (meaning

a determination of no adverse effect or the signing of a Memorandum of Agreement) and under Section 7 of the Endangered Species Act have been completed. The notice shall:

(a) Briefly describe the proposed action;

(b) State that based on an EA, it has been determined that the action will not result in significant impacts to the quality of the human environment, therefore, an EIS is not required;

(c) Identify a person to contact for further information or to obtain a copy of the FONSI and EA; and

(d) Include the following statement: “This FONSI is a finding on environmental effects, not a decision to proceed with an action, therefore cannot be appealed. 25 C.F.R. Part 2.7 requires a 30 day appeal period after the decision to proceed with the action is made before the action may be implemented. Appeal information will be made publically available when the decision to proceed is made.”

NOTE: See Appendix 9 for an example of a FONSI.

C. Record Keeping. Copies of all FONSI's generated within a Region shall be provided to, and retained by the Regional NEPA Coordinator.

D. Review by Next Higher Line Official. The Bureau decision maker shall make controversial EA's available for review by the next higher line official before the Notice of Availability is published.

E. Publish Notice of Availability. The notice of availability of the FONSI shall be made publicly available for 30 days. The notice shall be provided as required by §1506.6(b), such as publication in a local newspaper. Notices for minor localized actions need only be posted at the agency and tribal offices.

NOTE: It would be advisable to make the decision to proceed with the action publicly available at the same time as the Notice of Availability for the FONSI. The time between the Notice and the time when the action may be implemented will then correspond to the 30-day appeal period on the decision to proceed required in 25 C.F.R. 2.7.

5.4 EA Supplements and Revisions. An EA that has not been acted upon must be reviewed to determine if it needs to be revised or supplemented when

A. it is more than 3 years old;

B. substantial changes have been made in the proposed action that may be relevant to environmental concerns; and/or

D. significant new circumstances or information relevant to environmental concerns are present.

## 6. ENVIRONMENTAL IMPACT STATEMENT

6.1 Introduction. The purpose of this chapter is to provide guidance for the preparation of an EIS. The purpose of an EIS is stated in §1502.1. (See also §§1502.2 - 1502.25.) An EIS provides information to decision makers on the potential impacts of proposed actions on the quality of the human environment, and discloses that information to the public. Much of the guidance given in the previous section on EAs is also applicable to EISs. Two basic differences between an EA and an EIS are the depth of the analysis and the formalities regarding public involvement.

6.2 Lead Agency. The lead agency is the federal agency preparing, or having taken primary responsibility for preparing and administratively processing the EIS. ( See §1501.5)

A. Joint Lead Agency. When more than one federal agency has an action being analyzed in the same EIS, such as when one agency is funding a road and another is approving the right of way, the following apply:

(1) Non-delegated EIS. The EIS may be referred to OEPC. OEPC will then coordinate the administrative processing of the EIS.

(2) Delegated EIS. Federal agencies may agree as to which joint lead agency will coordinate the administrative processing of the EIS. If there is a disagreement, OEPC may designate which Bureau within the Department will assume this role, or may recommend a non-delegated EIS. For joint EIS's with agencies outside the Department, OEPC will represent the Department in consultations with CEQ or other federal agencies in resolving which joint lead agency will coordinate the administrative processing of the EIS.

(3) Non-Federal Agencies. A non-federal agency may not be designated as a joint lead agency unless it has a duty to comply with a local or state EIS requirement that is comparable to NEPA.

B. Cooperating Agencies. Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed action may become a cooperating agency. ( See §1501.6.) An affected Indian tribe or state or local agency may similarly become a cooperating agency. Bureau requirements for including tribes as cooperating agencies are in 2.5 B. Cooperating agencies should be identified and confirmed in writing by the time the scoping process is completed, and DEM notified in accordance with 1.5 B. of any agreements or declinations to assume cooperating agency status.

6.3 Designation of EIS Team and Team Leader. When the decision has been made to prepare an EIS, the Regional Director will appoint an EIS team leader and, if required, a Contracting Officer's Technical Representative from the appropriate program staff. BIA will use an interdisciplinary team approach. Regional and/or DEM environmental staff, as appropriate,

shall be represented on the EIS team and be responsible for the adequacy of the document. The team leader, in consultation with these environmental staff, will make recommendations to the Regional Director for the selection of other EIS team members. For the applicability of FACA to an EIS team, see 2.7.C.

#### 6.4 Preparation.

A. Notice of Intent (NOI). The first formal step in preparing an EIS is publication of a Notice in the Federal Register, informing the public that the Bureau intends to prepare an EIS. The NOI should be published as soon as possible after the decision is made to prepare an EIS. The NOI shall briefly describe the proposed action and possible alternatives, and the agency's proposed scoping process, including whether, when, and where any scoping meeting(s) will be held. It shall also include the name and telephone number of a contact person within the agency. (See §1508.22). The NOI shall be sent to DEM for processing for Federal Register publication. The Bureau office initiating the EIS should make the NOI available through other media, such as local newspapers, that will provide adequate notice to the affected public.

(1) Notice of Correction. Corrections may be required if there are omissions, errors or changes in the information provided in the NOI. The notice must reference the date and page numbers of all previous Federal Register notices relating to the proposed action. This notice must be published in the Federal Register and made available through the same media as the original NOI.

(2) Notice of Cancellation. A notice of cancellation shall be prepared promptly if a decision is made to terminate the EIS process. The notice must reference the date and page numbers of all previous Federal Register notices relating to the proposed action. This notice must be published in the Federal Register and made available through the same media as the original NOI.

NOTE: All Notices of Intent, Correction, or Cancellation shall be sent to DEM for processing for Federal Register publication. DEM will obtain the signature of the Assistant Secretary - Indian Affairs (which is required for Federal Register publication), transmit the notice to the Federal Register, and forward copies of the notice to OEPC and the EPA Office of Federal Activities. Sample notices are provided in Appendices 10 - 12.

B. Scoping (See §§1501.7 and 1508.25). Scoping is an early and open process through which cooperating agencies and interested persons are identified, and the significant issues and alternatives to be addressed in the EIS are determined. Scoping must include a reasonable effort to meet the community-based training and management objectives described in 2.7.A. and B. The lead agency shall:

(1) Invite the participation of affected federal, state and local agencies, any affected Indian tribe, any affected minority or low income community (environmental

justice), the proponent of the action, and other interested persons, including those who might not be in accord with the action on environmental grounds. In addition, the Solicitor's Office and the Departmental Regional Environmental Officer should be invited.

(2) Determine the alternatives and significant issues to be analyzed in depth in the EIS (§1508.25).

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§1506.3).

(4) Allocate assignments for preparation of the EIS among the lead and cooperating agencies, with the lead agency retaining responsibility for the EIS.

(5) Indicate any public EAs or other EISs which are being or will be prepared that are related to, but are not part of the scope of the EIS under consideration.

(6) Identify other environmental review and consultation requirements, such as Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act and Section 20 of the Indian Gaming Regulatory Act, so that other required analyses and studies may be prepared concurrently, and integrated with the EIS.

(7) Establish a timetable for preparing and completing the EIS.

C. Scoping Meetings. Scoping meetings in various formats are a useful, but optional tool for scoping (§1501.7(b)(4)). Local partnerships, collaborative workgroups interactive web sites and other mechanisms should also be considered as means to provide a timely exchange of information with the public so that the scoping process and follow-up activities continue to reflect the public's input. If scoping meetings are held, the required public notice shall be included in the Notice of Intent. The NOI shall be published at least 15 days in advance of scoping meetings. DEM must be contacted before meeting dates are set to ensure proper lead time in the NOI.

D. Scoping Reports. When the scoping process is completed, the EIS team leader submits a scoping report (Appendix 13) to the Regional Director. A copy of the scoping report shall be provided to the affected tribe(s), any cooperating agencies, and any person who requested a copy.

The scoping report shall include:

(1) A statement of the purpose and need for the proposed action;

(2) The alternatives being considered;

- (3) A summary of the significant issues identified during the scoping process;
- (4) A list of agencies which have agreed to be cooperating agencies;
- (5) A summary of any scoping meetings that were held; and
- (6) Any other information that the EIS team leader deems appropriate.

E. EIS Format. (§§1502.10-1502.18.)

(1) Cover Sheet/Letter. (§1502.11.) The cover sheet/letter shall not exceed one page. It shall include the following:

- (a) The names of the lead agency(s) and any cooperating agencies;
- (b) The title of the proposed action. This title must include the name of the state(s), county(s), Indian reservation(s) or other jurisdiction(s) where the action is located, and must state whether the EIS is a draft, final, or a draft or final supplement;
- (c) The titles of any related cooperating agency actions;
- (d) The name, address and telephone number of a lead agency contact;
- (e) A one-paragraph abstract of the EIS; and
- (f) The date by which comments must be received.

(2) Cover/Title Page. The cover/title page must contain items E.(1)(a) and (b) above, plus the name(s) of the preparing entity(s), and the date of issue. The title page is normally signed by the Regional Director. However, in some cases a programmatic or other broad scope EIS is signed by the Assistant Secretary.

(3) Executive Summary. (§1502.12). This summary shall stress the major conclusions, areas of environmental controversy and the issues to be resolved, including the choice among alternatives. Matrices, tables, and other graphic displays may be useful to include in the Summary. Specific analysis regarding the impacts and other data will be found in the body of the EIS.

(4) Table of Contents.

(5) Purpose of and Need for Action. (§1502.13). In this section, explain why the proposed Bureau action is being considered. The purpose of and need for the action should, at a minimum, clearly answer the questions: What federal action triggered NEPA? Why here? and Why now? The proposed action and alternatives must address the purpose and need directly.

(6) Alternatives. (§1502.14). In this section, describe, but do not analyze, the proposed action, the no action alternative, and reasonable and feasible alternatives for meeting the purpose and need for action. [In a final EIS, a preferred alternative must be identified. Ordinarily, this would be the environmentally preferred alternative, which is the one judged to be the least damaging to the biological and physical environment. If the Bureau's preferred alternative differs from the applicant's proposed action, both alternatives must be identified in this section. If a preferred alternative cannot be identified, contact DEM for assistance.]

NOTE: Differences in the proposed action, such as size or location, are appropriate alternatives to consider, but by themselves are not sufficient to meet CEQ regulations. Viable alternatives are other possible means to meet the purpose and need, such as a sports complex instead of a casino to meet the need for tribal income.

(7) Affected Environment. (§1502.15). For this section, follow the guidance in 4.4.E. The information in an EIS should be more detailed than that in an EA, but no more than what is needed to understand the impacts to be analyzed in the Environmental Consequences section. As with an EA, only those components of the environment that will actually be affected require detailed description. For each of the remaining components, a brief discussion of why the component will not be affected is sufficient.

(8) Environmental Consequences. (§1502.16). This section forms the scientific and analytic basis for comparing the impact of the proposed action and other alternatives, including the no action alternative, on the environment. For this section, follow the guidance in 4.4.F. The information in an EIS should be more detailed than that in an EA, and must also include discussion of:

- (a) Any adverse effects that cannot be avoided;
- (b) The relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity;
- (c) Any irreversible and irretrievable commitments of resources;

(d) Possible conflicts between the proposed action and the objectives of federal, tribal, regional, state and local land use plans, policies and controls for the area(s) of concern;

(e) Energy requirements and conservation potential of alternatives and mitigation measures;

(f) Natural or depletable resource requirements and conservation potential of alternatives and mitigation measures; and

(g) The design of the built environment, including the reuse and conservation potential of alternatives and mitigation measures.

(9) Mitigation. Analysis of alternatives must include a discussion of mitigation measures where mitigation is feasible, and of any monitoring designed for adaptive management (see 4.4.G.(2)). The purpose of including mitigation measures is to permit a full and accurate comparison of the environmental effects of the alternatives.

NOTE: Mitigation of adverse environmental impacts is not required to implement a proposed action. The purposes of NEPA are met by analyzing these impacts and disclosing them to the public in the EIS.

(10) Consultation and coordination. (§1502.25). For this section, follow the guidance in 4.4.H. In addition, this section shall include a list of agencies, organizations and individuals receiving a copy of the document. The final EIS should have an "\*" before those entities and individuals that commented on the DEIS.

(11) List of Preparers. List all persons, with position title and area of expertise/discipline, who contributed to the development of the EIS.

(12) Appendices. (§1502.18). Appendices shall include, but not be limited to correspondence and reports resulting from consultation and coordination; a list of references cited; studies generated specifically in connection with the proposed action; and any other appropriate material.

#### F. Other EIS Guidance.

##### (1) Data

(a) Methodology. (§1502.24) The methods used in collecting and analyzing data must be described in the EIS .

(b) Incomplete or Unavailable Information. (§1502.22) Every effort must be made to obtain the information needed to fully evaluate all reasonably foreseeable impacts. The Bureau should not move ahead on proposals without having all of the relevant obtainable information. Information needs should be identified early, to enable timely completion of required studies and integration of the information into the EIS. Where information relevant to adverse impacts is unobtainable due to exorbitant costs, or the means to obtain it are not known, the EIS shall state that the information is lacking and explain why.

NOTE: Some information may not be available to the Bureau because it is proprietary information maintained by an applicant or a tribe. The Bureau should work closely with the applicant or tribe on proprietary issues or information. Proprietary information may be withheld under NEPA to the extent allowed by the Freedom of Information Act. (§1506(f)) Federal agencies are, however, expected to have and report sufficient information to allow informed public review and enable agencies to make responsible decisions.

(c) Combining Documents. (§1506.4) CEQ and the Department encourage combining documents to reduce duplication and paperwork.

(i) Tiering. (§1502.20) Tiering is where a site specific action references a program, policy, or plan covered in an EIS of broad scope. The EIS (or EA) for the narrower action need only address the issues specific to that action.

(ii) Transferred Analysis. Transferred analysis is where environmental impact information learned in one circumstance can be used in the analysis of a similar project or circumstance. Transferred analysis can be assisted by the exchange of environmental information stored in agency libraries and databases. The Bureau should work with other federal agencies to establish and share common databases containing examples of good and bad documents, sources with contact information, procedures for tiered and transferred analysis, and limits on use of certain information.

(iii) Incorporation by Reference. (§1502.21) All or portions of any pertinent, publically available document, including, but not limited to existing EAs, EISs or state environmental documents, may be incorporated by reference into an EIS. The text of the EIS need only include a brief synopsis of such incorporated information.

(2) Funding and Contracts. Funding the EIS and choosing a consulting firm to prepare the EIS may be done by any of the following means.

(a) Federal Procurement. The Bureau may itself fund the EIS and may choose the consulting firm under the federal procurement regulations.

(b) Tribal Procurement. The Bureau or the project applicant may transfer funds for the EIS to a tribe, and the tribe then solicit proposals under its own procurement process from consulting firms. The proposals received are passed along to the Bureau, which chooses the consulting firm and informs the tribe of its choice. The tribe, in turn, informs the firm of this choice and enters into a contract with the firm. The contract must contain a provision that the consulting firm is preparing the EIS for, and under the direction of the Bureau, and the EIS must in fact be prepared under the ultimate direction of the Bureau. A three party agreement may be used to confirm this arrangement.

(c) Third Party Contract. A project applicant may fund the EIS and solicit proposals from consulting firms. The proposals received are passed along to the Bureau, which chooses the consulting firm and informs the project applicant of its choice. The project applicant informs the firm of this choice and enters into a contract with the firm. The contract must contain a provision that the consulting firm is preparing the EIS for, and under the direction of the Bureau, and the EIS must in fact be prepared fully under the direction of the Bureau. A three party agreement may also be used to confirm this arrangement.

(d) Disclosure Statement. (§1506.5 (c) Any consulting firm chosen to prepare an EIS for the Bureau must prepare a statement (see Appendix 14) disclosing that it has "no financial or other interests in the outcome of the project." The Bureau shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the EIS.

## 6.5 Review.

A. Preliminary Draft EIS. (§1502.17) After the EIS team determines that a preliminary draft of the EIS is complete, it should be distributed to other affected offices within the lead, joint lead and cooperating agencies for critical review and comment. The purpose of this review is to insure legal adequacy, policy consistency, and technical accuracy. Internal distribution should at least include: appropriate Field Office, Agency, Regional Office and Central Office personnel, the Office of the Solicitor (Headquarters, Regional or Field, as appropriate), and the OEPC Regional Environmental Officer. Sufficient time should be allowed for resolving conflicting views, evaluating new data or addressing significant concerns raised during review.

## B. Draft EIS.

(1) Printing. After revising the preliminary draft, as needed, in response to the review comments, prepare the DEIS for printing. At least 25 percent more copies of the DEIS should be printed than the project mailing list indicates are needed.

(2) Distribution. Transmittal letters and packaging (e.g. labels, containers) for mailing the DEIS should be prepared while the DEIS is being printed. The following parties shall be sent copies of, and requested to review and comment on the DEIS.

(a) Any federal agency with jurisdiction by law or special expertise with respect to the issue involved in, or impacts resulting from, the proposed action;

(b) Any federal, tribal, state or local agency responsible for environmental review, consultation, coordination, clearance, or permit requirements associated with the project;

(c) Affected Indian tribes;

(d) The applicant; and

(e) All other parties on the project mailing list and anyone else who requested a copy of the DEIS.

(3) File with EPA. DEM files the DEIS with the Environmental Protection Agency (EPA) and OEPC, and distributes it to other bureaus and services within the Department at the Central Office level. For these purposes, 6 hard and 17 CD copies of

the DEIS shall, at the same time as the distribution in 6.5.B(2), be sent to DEM. DEM will obtain a control number for the DEIS from OEPC.

(4) Notice of Availability (NOA). EPA serves as the repository for all EISs prepared in accordance with NEPA, and is responsible for publishing the NOA for the DEIS in the Federal Register. EPA publishes the NOA on the Friday of the week after the week in which they receive the DEIS (5 copies). EPA will not, however, publish the NOA if the DEIS has not been distributed as specified in 6.5.B(2) and (3). EPA's NOA officially starts the comment period for the DEIS.

(5) Bureau Notice. (§1502.19) The Bureau shall supplement the EPA NOA by publishing and/or posting its own notice in other media (including Web sites) and/or

mailing the notice to reach the widest possible affected public, including minority or low income communities. This notice shall at a minimum contain a brief description of the proposed action and alternatives; the name, address and telephone number of the individual to whom to submit comments; and the closing date for the receipt of comments. The Bureau Notice must be published on or before the date EPA publishes their NOA in the Federal Register, and the closing date for comments in the Bureau Notice must be the same as the closing date in the EPA NOA. The Bureau Notice shall also announce the date(s) of the public hearing(s) (6.5.B(6) for the DEIS.

(6) DEIS Review and Comment Period. (§1506.10) The review period for a DEIS is at least 45 days (516 DM 4.26.A) following the date on which the EPA publishes the NOA in the Federal Register. The Bureau may allow a longer comment period, as appropriate.

NOTE: All extensions of review and waiting periods must be processed through DEM. Any changes from dates published in the Federal Register require a new notice in the Federal Register.

(a) Public Hearing. During the DEIS review period, at least one public hearing must be held. This hearing may be held no sooner than 15 days following EPA's publication of the NOA in the Federal Register. A court stenographer shall record all statements made at the public hearing(s).

NOTE: It would be best to hold the public hearing(s) near the middle of the comment period, to allow those attending time to prepare comments they may wish to submit in writing.

### C. Final EIS.

(1) Respond to Comments on Draft EIS and Prepare Preliminary Final EIS. (§1503.4) After the comment period has ended, a preliminary version of the final EIS is prepared. All comments received during the comment period, including those submitted or recorded at the public hearing(s), and our responses to the comments must be exhibited in the Final EIS (FEIS). If the changes made in response to the public comments are minor, the FEIS may consist of comments, responses and errata sheets to show changes from the DEIS. In such cases, only the comments, responses and errata sheets need to be circulated. The preliminary FEIS should be circulated for review, as in 6.5.A.

(2) Printing. After revising the preliminary version of the FEIS, as needed, in response to the review comments, prepare the FEIS for printing. (See 6.5.B(1)).

(3) Distribution. Follow the guidance in 6.5.B(2). In addition to the parties listed in 6.5.B(2), the FEIS must also be sent to anyone who submitted comments on the DEIS.

(4) File with EPA. Follow the guidance in 6.5.B(3).

(5) Notice of Availability. Follow the guidance in 6.5.B(4). This NOA officially starts the waiting period for the FEIS.

(6) Bureau Notice. Follow the guidance in 6.5.B(5). No public hearing is required for an FEIS.

(7) FEIS Waiting Period. The waiting period for a FEIS is 30 days following the date on which the EPA publishes the NOA in the Federal Register. If comments are made on the FEIS within the 30-day waiting period, they need not be considered in making the final decision on the proposed action, unless a significant issue has been raised. DEM will help in making this determination, along with the Office of the Solicitor, if necessary. The comments, however, must be answered in the ROD.

6.6 Record of Decision (ROD). The ROD (see Appendix 15), which constitutes the decision on the proposed action, is signed by the Bureau decision maker. In some cases, because of special circumstances or where the FEIS is programmatic or of broad scope, the Assistant Secretary may be the Bureau decision maker. No action having either an adverse environmental effect or which would limit the choice of alternatives may be taken before the ROD is issued, (§1506.1(a).

A. Issuing the ROD. The ROD may be issued at any of the following times, but not before consultation under Section 106 of the National Historic Preservation Act (meaning a determination of no adverse effect or the signing of a Memorandum of Agreement) and under Section 7 of the Endangered Species Act have been completed.

(1) Immediately After the Close of the 30-day Waiting Period for the FEIS. The advantage of this timing is that it allows comments requiring response that are received during the waiting period to be addressed in the ROD. The disadvantage is that the 30-day appeal period for the ROD (see 6.6 C.) means that the project cannot be implemented for a total of 60 days from the date on which the EPA publishes the NOA for the FEIS.

(a) When the Assistant Secretary signs the ROD at the close of the 30-day waiting period for the FEIS, the project may be implemented immediately, as there is no appeal period in a ROD signed by the Assistant Secretary.

(2) At the Same Time EPA Publishes the NOA for the FEIS. Where an agency, such as the Bureau, has an appeal period, CEQ allows (1506.10 (2)) the ROD to be issued

at the same time the NOA is published, so that the waiting period and the appeal period may run concurrently. The advantage of this timing is that it allows the soonest possible project to be implemented, 30 days from the publication date of the NOA for the FEIS. The disadvantage is the risk, that comments requiring a response may be received during the waiting period for the FEIS. In that event, the ROD would have to be reissued to address such comments, and would contain a new 30-day appeal period. This could result in a period of more than 60 days from the date on which the EPA publishes its NOA before the project may be implemented.

(a) When using this option, the FEIS, the ROD and the Bureau Notice must explain the timing of the ROD's issuance and the public's right of appeal.

(b) As a variation on this option, the ROD may be issued anytime during the waiting period for the FEIS. In this case the project could not be implemented at the close of the waiting period, but only after 30 days (the appeal period) from the date the ROD was signed.

(c) The Assistant Secretary may not sign a ROD prior to the close of the 30-day waiting period for the FEIS, as there is no appeal period in a ROD signed by the Assistant Secretary.

(3) Any Time After the Close of the 30-day Waiting Period for the FEIS. There is no maximum time limit on how long after the close of the 30-day waiting period for the FEIS the ROD may be issued. Depending upon the amount of time that has passed since issuance of the FEIS, however, the FEIS may need to be reviewed for freshness according to the guidance in 6.7 before the ROD is issued.

B. ROD Contents. In addition to answering any comments received during the 30-day FEIS waiting period, the ROD must state which alternative has been selected for implementation and briefly discuss the other alternatives considered. There is no requirement to select the environmentally preferred alternative in the EIS. If it is not selected, however, it must be identified as the environmentally preferred alternative in the discussion of the other alternatives considered and the reason it was not selected must be given. If the selected alternative includes mitigation measures, these must be incorporated in the ROD. The decision should provide for monitoring or other means, including adaptive management (see 4.4.G.(2), to insure that these measures are implemented.

C. ROD Distribution. The ROD must be published and/or posted (including on Web sites), as needed, to reach the widest possible affected public, including minority or low income communities, but does not need to be published in the Federal Register. It must also be mailed to the parties listed in 6.5.B(2) and to any additional parties who submitted comments on the FEIS.

D. Appeals. 25 C.F.R. 2.7 requires a 30 day appeal period after the ROD is published or posted before the proposed action may be implemented. The ROD shall contain the following statement:

"Any person who may be adversely affected by this decision may appeal the decision [*if by Regional Director*] to the Interior Board of Indian Appeals (IBIA) at 801 N. Quincy Street, #300, Arlington, Virginia, 22203, [*if by Superintendent or Field Office Director, to: Regional Director/address*] in accordance with the regulations set forth at 25 CFR Part 2. The notice of appeal must be signed and mailed within thirty days of the date of this decision. The notice should clearly identify the decision being appealed, and a copy of the decision should be attached to the notice of appeal. Copies of the notice must be sent to the Assistant Secretary for Indian Affairs, MS 4140-MIB, U.S. Department of the Interior, 1849 C Street, N.W., Washington, D.C., 20240, as well as to my office and to all other interested parties known to the person appealing the decision. The notice of appeal to the [**IBIA or Regional Director**] must also certify that the appealing party sent copies to each of these parties. The [**IBIA or Regional Director**] will notify an appealing party of further appeal procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior."

EXCEPTION: Do not include this statement when the ROD is signed by the Assistant Secretary - Indian Affairs. Such decisions are final for the Department (25 C.F.R. 2.6).

6.7 EIS Supplements and Revisions. Draft and final EISs must be reviewed to determine if they need to be revised or supplemented under the conditions listed in A - E below. Supplemental and revised draft and final EISs are subject to the same preparation (see Chapter 6.4 of this Handbook) and review (see Chapter 6.5 of this Handbook) requirements, except for scoping, as regular draft and final EISs, unless they are determined to be for information purposes only (§1502.9).

- A. A DEIS is more than 3 years old and the FEIS has not been completed.
- B. An FEIS is more than 5 years old for an action not yet taken.
- C. Substantial changes have been made in the proposed action that may be relevant to environmental concerns.
- D. Significant new circumstances or information relevant to environmental concerns.
- E. Comments received result in the inclusion of a new preferred alternative which was not detailed as a reasonable alternative in the draft or final EIS.

NOTE: A. or B. alone do not trigger the requirement for a supplemental draft or final EIS. One or more of C., D. or E. must have occurred.

## **Illustration 2**

### ENVIRONMENTAL IMPACT STATEMENT PROCESS

DETERMINE EIS REQUIRED

ISSUE NOTICE OF INTENT (NOI) IN FEDERAL REGISTER

SCOPING (MAY INCLUDE PUBLIC MEETINGS)

PREPARE AND DISTRIBUTE SCOPING REPORT

PREPARE AND REVIEW PRELIMINARY DRAFT EIS  
(WITH JOINT AND/OR COOPERATING AGENCIES)

PREPARE DRAFT EIS (DEIS)

APPROVE DEIS (EIS TEAM)

DISTRIBUTE DEIS

FILE WITH DOI AND EPA

ISSUE BUREAU PUBLIC NOTICE

EPA ISSUES NOTICE OF AVAILABILITY (NOA) IN FEDERAL REGISTER  
(STARTS CLOCK ON COMMENT PERIOD)

PUBLIC REVIEW AND COMMENT PERIOD  
(MINIMUM 45 DAYS)

HOLD PUBLIC MEETING(S)

RESPOND TO COMMENTS

PREPARE AND REVIEW FINAL EIS (FEIS)

APPROVE FEIS (REGIONAL DIRECTOR)

**Illustration 2 (CONT'D.)**

ENVIRONMENTAL IMPACT STATEMENT PROCESS (CONT'D)

DISTRIBUTE FEIS

ISSUE BUREAU PUBLIC NOTICE

FILE WITH DOI AND EPA

EPA ISSUES NOA IN FEDERAL REGISTER  
(STARTS CLOCK ON WAITING PERIOD)

PREPARE RECORD OF DECISION (ROD)  
(MINIMUM 30 DAYS AFTER NOA)

IMPLEMENT ACTION  
(AFTER 30 DAY APPEAL PERIOD)

## 7. REVIEW OF ACTIONS OF OTHER AGENCIES

7.1 Introduction. The purpose of this chapter is to provide guidance on reviewing environmental documents of other agencies. It also explains the process for referral to CEQ when environmental impacts of an action proposed by another agency would have adverse consequences for an Indian tribe or trust resources.

7.2 Reviewing and Commenting on EISs. (§1503) CEQ regulations require that the lead agency for an EIS obtain comments from Federal agencies with jurisdiction by law or special expertise, and request comments from affected tribes and appropriate state and local agencies. Since the Bureau has special expertise in matters affecting Indian tribes, and in some cases also has jurisdiction by law, other agencies frequently ask the Bureau for comments on their (the other agencies') EISs. In such cases, the Bureau has the duty to comment. For agencies within DOI, the Bureau may comment directly to the agency. For agencies outside of DOI, comments must be submitted through DEM for coordination by OEPC.

NOTE: The best way for the Bureau or a tribe to influence the decision making of another federal agency is to become involved early in the EIS process. It is far more effective to participate in scoping and/or become a cooperating agency than to wait until the DEIS is written and then submit comments. Also, the Bureau should establish working relationships with other federal agencies wherein the Bureau and potentially affected tribes are routinely consulted on proposed actions that may affect Indian tribes.

7.3 Pre-decision Referrals to CEQ. (§1504) CEQ regulations establish a procedure through which, following the filing of an FEIS, but prior to a decision based thereon, a Federal agency which objects to the proposed action on environmental grounds may refer the matter to CEQ. In such situations, CEQ may take a range of actions including submitting the matter to the President.

A. Bases for Referral. Pre-decision referral may be triggered by controversy over the material facts in an EIS, or by the likelihood that the proposed action will violate environmental requirements or policies (§1504.3(c)(2)(i and ii), such as the federal trust responsibility to manage and conserve trust resources for beneficial use by Indian tribes.

B. Timing and Process. Except where the lead agency has granted an extension, referral of another agency's action must be done within 25 days of the filing of the FEIS with EPA. DEM must, therefore, be contacted without delay when a referral to CEQ appears warranted. DEM will then contact the lead agency to try to resolve the problem. If the problem cannot be resolved promptly, DEM will initiate the referral process. DEM may ask Regional staff to prepare the documentation required by §1504.3(a) - (c), and a cover memorandum highlighting the significant issues.

7.4 Pre-decision Referral of BIA Actions by Other Agencies. If another federal agency informs the Bureau that it intends to refer a proposed Bureau action to CEQ, DEM, in coordination with OEPC, will promptly meet with that agency in order to try and resolve the issue.

7.5 Post-Decision Referrals to EPA. Pursuant to Section 309 of the Clean Air Act, EPA is required to refer to CEQ any action the Administrator of EPA believes to be unsatisfactory from the standpoint of public health, welfare, or environmental quality. If at any phase of the proposed action it becomes apparent that an unacceptable environmental impact is expected or is occurring, the Assistant Secretary will request that EPA initiate action under Section 309. This action would be subject to demonstration by the Assistant Secretary that the impact is unsatisfactory.

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